

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS**

LKQ CORPORATION, and KEYSTONE  
AUTOMOTIVE INDUSTRIES, INC.,

Plaintiffs,

v.

KIA MOTORS AMERICA, INC. and KIA  
MOTORS CORPORATION,

Defendants.

Civil Action No. 1:21-cv-03166

Jury Trial Demanded

**DECLARATION OF THOMAS R. BURNS, JR.,  
IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFFS'  
OPPOSED MOTION TO COMPEL KIA TO COMPLY WITH ITS ESI OBLIGATIONS**

I, Thomas R. Burns, Jr. declare as follows:

1. The facts set forth herein are based on my personal knowledge and are true and correct to the best of my knowledge, belief, recollection, and understanding. All statements made on information and belief are believed to be true.

2. I am an attorney at the law firm of Bartkowski PLLC, counsel of record in this action for Defendants Kia Motors America, Inc. and Kia Motor Company (collectively, "Kia"), and I am willing to testify if needed.

3. I submit this declaration in support of Kia's Opposition to Plaintiffs' Motion to Compel Kia to Comply with its ESI Obligations.

4. Attached as Exhibit A are true and correct copies of six emails counsel for LKQ sent to counsel for Kia on September 30, 2022, regarding perceived deficiencies in Kia's discovery responses.

5. Attached as Exhibit B is a true and correct copy of an email counsel for LKQ sent to counsel for Kia on October 5, 2022. In it, counsel for LKQ states: "It appears there is a typographical error in Kia's response in that Kia refers to [REDACTED]  
[REDACTED]. Can you provide a supplemental response correcting this error?"

[REDACTED]

6. Attached as Exhibit C are true and correct copies of the cover pages from Kia's responses to LKQ's recent discovery requests to Kia. The titles of each response indicate the cumulative number of each type of request that Kia has already responded to, including 19 interrogatories, 156 requests for production, and 1,719 requests for admission.

7. Attached as Exhibit D are true and correct copies of the cover pages from each of Kia's supplemental responses to LKQ's first set of interrogatories, served on April 8, 2022, May 20, 2022, August 10, 2022, August 24, 2022, and September 30, 2022.

8. Attached as Exhibit E are true and correct copies of the cover pages of service from each of Kia's supplemental responses to LKQ's second set of interrogatories, served on September 19, 2022, September 30, 2022, and October 21, 2022.

9. Attached as Exhibit F are true and correct copies of the cover pages and certificates of service from LKQ's Fourth Set of Interrogatories (Nos. 20-22) and LKQ's Fifth Set of Requests for Production (Nos. 157-164), both of which LKQ served on November 16, 2022.

10. Attached as Exhibit G is a true and correct copy of an email chain between counsel for LKQ and counsel for Kia scheduling the Rule 26(f) conference for July 23, 2021.

11. Attached as Exhibit H are true and correct copies of the cover pages and certificates of service from each of LKQ's first set of interrogatories, requests for production, and requests for admission, all of which LKQ served on November 18, 2021.

12. Kia has produced 33,106 documents in this case. That includes 26,731 documents produced the ITC proceeding that are considered produced in this case under the parties' cross-use agreement. Kia's document production includes native files of at least Word files, Excel files, PDF files, and JPG files, and includes all original metadata.

13. Attached as Exhibit I is a true and correct copy of an email counsel for LKQ sent to counsel for Kia on October 5, 2022, and a true and correct copy of the attachment to that email,

“ND ILL esi patent local rules.pdf,” which is titled “Northern District of Illinois Local Patent Rules for Electronically Stored Information.”

14. Attached as Exhibit J is a true and correct copy of an email counsel for Kia sent to counsel for LKQ on November 8, 2022.

15. Attached as Exhibit K is a true and correct copy of an email chain between counsel for Kia and counsel for LKQ between November 8, 2022, and November 17, 2022. Kia produced “████████” on November 23, 2022.

16. Attached as Exhibit L is a true and correct copy of United States Patent D592,773. The application date for D592,773 is November 14, 2008, more than 14 years ago. Attached as Exhibit M is a true and correct copy of United States Patent D785,833. The application date for D785,833 is March 10, 2016, more than 6 years ago.

17. Attached as Exhibit N is a true and correct copy of an email counsel for Kia sent to counsel for LKQ on October 19, 2022.

18. Attached as Exhibit O is a true and correct copy of an excerpt of Kia’s October 21, 2022, Supplemental Responses to LKQ’s Second Set of Interrogatories, including Kia’s supplemental response to Interrogatory No. 11.

19. Attached as Exhibit P is a true and correct copy of the public version of the Joint Motion for Leave to Reopen the Evidentiary Record to Admit their Joint Stipulation Regarding Newly Disclosed Consumer Clinics, filed with the ITC on November 22, 2022.

20. Attached as Exhibit Q is a true and correct copy of an excerpt of Kia’s November 23, 2022, Supplemental Responses to LKQ’s First Set of Interrogatories, including Kia’s supplemental response to Interrogatory No. 2.

21. Prior to filing its Motion, counsel for LKQ did not send counsel for Kia a copy of the “[Model] Stipulated Order for Discovery of Electronically Stored Information for Standard



Litigation,” which was included as Exhibit B to the Bregenzer Declaration in support of LKQ’s Motion.

22. Attached as Exhibit R is a true and correct copy of Kia’s Responses to LKQ’s First Set of Requests for Production, served on January 21, 2022.

23. Attached as Exhibit S is a true and correct copy of an email counsel for Kia sent to counsel for LKQ on August 26, 2022. In the second paragraph, counsel for Kia stated, “Importantly, I can confirm Kia has produced its documents in the Kia NDIL case as they are kept in the ordinary course of business.”

24. In the November 8, 2022, meet and confer, counsel for LKQ did not raise issues related to metadata, including the specific metadata issues addressed in LKQ’s Motion. LKQ’s Motion was the first time that LKQ identified any alleged metadata issues regarding KIA\_NDIL 075397-075429, KIA\_NDIL 075553-075591, KIA\_NDIL 062549-062597, KIA\_NDIL 059845-059858, KIA\_NDIL 056141, and KIA\_NDIL 009355.

25. Kia produced native versions of KIA\_NDIL 075397-075429, KIA\_NDIL 075553-075591, KIA\_NDIL 062549-062597, KIA\_NDIL 059845-059858, KIA\_NDIL 056141, and KIA\_NDIL 009355. Each of those files were produced with the original metadata that exists in the documents. For example, the following screenshot shows the metadata in the native Microsoft Word document produced as KIA\_NDIL 075397-429, as shown in Microsoft Word:



26. KIA\_NDIL 056141 and KIA\_NDIL 009355 are .jpg files. Kia produced each of these documents in native format with all available metadata that exists in the original native .jpg files. In the documents produced by Kia, both the date created and date modified fields contain no associated metadata, meaning those fields are blank and should be blank in LKQ's production. Specifically, below is a screenshot, from counsel for Kia's document review platform, of the metadata fields at issue—date created and date modified—for KIA\_NDIL 009355 as it was produced by Kia:

Select ▾	Title	Bates	Date Created	Date Last Modified
1	<input type="checkbox"/> TD IMAGE(front)	KIA_NDIL 009355		

[REDACTED]

Similarly, below is a screenshot, from counsel for Kia's document review platform, of the metadata fields at issue—date created and date modified—for KIA\_NDIL 056141 as it was produced by Kia:

Select	Title	Bates	Date Created	Date Last Modified	D
1	<input type="checkbox"/> <a href="#">내수-MFR포그(최종)</a>	KIA_NDIL 056141			

I declare under the penalty of perjury and the laws of the United States of America that the foregoing is true and correct.

Executed on November 30, 2022, in Washington D.C.

*/s/ Thomas R. Burns, Jr.*  
Thomas R. Burns, Jr.